

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

TAHER TAHER,	:	
	:	
Petitioner(s),	:	
	:	Case Number: 1:08cv2
vs.	:	
	:	District Judge Susan J. Dlott
WARDEN, LEBANON CORRECTIONAL	:	
INSTITUTION,	:	
	:	
Respondent(s).	:	

ORDER

The Court has reviewed the Report and Recommendation of United States Magistrate Judge Timothy S. Hogan filed on September 19, 2008 (Doc. 13), to whom this case was referred pursuant to 28 U.S.C. §636(b), and noting that no objections have been filed thereto and that the time for filing such objections under Fed. R. Civ. P. 72(b) expired October 9, 2008, hereby ADOPTS said Report and Recommendation.

Accordingly, petitioner's motion to hold "this action ... in Abeyance" (Doc. 10) is DENIED.

Respondent's motion to dismiss (Doc. 9) is GRANTED, and petitioner's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (Doc. 1) is DISMISSED without prejudice to refiling after petitioner has exhausted the arguably available remedies of a delayed application to reopen his appeal pursuant to Ohio R. App. P. 26(B), and/or motion for delayed appeal to the Ohio Supreme Court from the Ohio Court of Appeals' April 4, 2007 Judgment Entry affirming the trial court's resentencing decision.

A certificate of appealability will not issue under the standard set forth in *Slack v.*

*McDaniel*, 529 U.S. 473, 484-85 (2000), because “jurists of reason” would not find it debatable whether this Court is correct in its procedural ruling that petitioner has failed to exhaust state remedies and that this case will be dismissed without prejudice pending exhaustion of such remedies.

With respect to any application by petitioner to proceed on appeal *in forma pauperis*, the Court will certify pursuant to 28 U.S.C. § 1915 (a)(3) that an appeal of any Order adopting this Report and Recommendation will not be taken in “good faith,” and therefore DENIES petitioner leave to appeal *in forma pauperis*. See Fed. R. App. P. 24(a); *Kincade v. Sparkman*, 117 F.3d 949, 952 96<sup>th</sup> Cir. 1997).

IT IS SO ORDERED.

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s\_/Susan J. Dlott\_\_\_\_  
Susan J. Dlott  
United States District Judge